

# The Ombudsman for Children in Sweden

Submission to the UN  
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## Summary

The Ombudsman for Children in Sweden was founded in 1993 and is charged with representing children in accordance with the UN Convention on the Rights of the Child (CRC). We monitor and encourage the implementation of the CRC.

Over the last few years the Ombudsman for Children in Sweden has systematically listened to children in vulnerable situations. We have organized expert groups of children who have experienced violence or abuse, who have been in society's care or experienced exclusion. We have visited children in state-run special residential homes for young people, in transit housing for unaccompanied asylum-seeking children, in homes for care or residence, in remand prisons and police cells and in institutional and compulsory psychiatric care. The picture that emerges is that the rights of children in vulnerable situations are disregarded in two fundamental respects. First, the child's right to express their views and be heard and second, the child's right to have his/her case examined and obtain redress when his/her rights are violated. In our latest annual reports, we have reported how children in vulnerable situations describe that they don't know their rights and feel they have limited opportunities for being heard on issues that are extremely important to them. It is particularly grave that agencies which are meant to provide important protection for children as a rule are unknown or inaccessible to them. This applies to the social services, but also to supervisory authorities and the courts. Sweden also falls short in providing children with the opportunity to have their case heard and obtain redress when the violating party is the state.

The Ombudsman's submission will focus on promotion and protection of human rights for children deprived of their liberty. Based on our meetings with children in state-run special residential homes for young people, in remand prisons and police cells and in institutional and compulsory psychiatric care we have outlined important recommendations for the Swedish government in order to guarantee the human rights of children deprived of their liberty.

# Sweden must guarantee the human rights for children deprived of their liberty

## 1. Children placed in special residential homes

### *a) Abolish solitary confinement for children placed in special residential homes for young people*

Children and young people who are in custody and placed in special residential homes for young people are in a particularly vulnerable situation. Currently the law (Care of Young Persons Act (1990:52) and Act on the Enforcement of Closed Juvenile Care (Law 1998:603)) allows for them to be placed in what is termed “seclusion”, in special solitary confinement rooms, if they display violent behaviour or are under the influence of drugs to the extent that they jeopardize the general order at the home. The Ombudsman for Children in Sweden’s examination of the records of more than 450 cases of seclusion at special residential homes for young people over a six-month period in 2008 showed that seclusion had been used in a manner that is not consistent with either Article 37 of the CRC, Swedish legislation or the guidelines of the National Board of Institutional Care (SiS). In several cases seclusion had been used routinely or as a punishment, and there were also examples of children and young people suffering from anxiety or a crisis having been secluded instead of receiving proper treatment. During the period studied, approximately 100 seclusions had been imposed on children under 15 years of age.

Since our audit in 2009, several changes have been made to strengthen the rights of children placed in special residential homes for young people. SiS has clarified its internal instructions, trained personnel and tightened up its procedures for decisions on solitary confinement. In the years that followed, both the number of seclusions and the average amount of time that children were secluded dropped sharply, but statistical data shows a renewed increase since 2012.<sup>1</sup> This indicates that the problem of numerous and prolonged seclusions is exacerbated when the issue is not given attention. **The Ombudsman for Children in Sweden does not consider the measures taken to be sufficient – and recommends the Swedish government to abolish solitary confinement for children placed in special residential homes for young people.**<sup>2</sup>

## 2. Children suspected of crime and deprived of their liberty

During 2012 the Ombudsman for Children in Sweden met with children and young people who had been deprived of their liberty in police cells and remand prisons. We visited a total of 13 police cell blocks and remand prisons in different parts of Sweden, and carried out additional studies. Our 2013 annual report details systematic and very far-reaching shortcomings regarding the human rights of children deprived of their liberty.<sup>3</sup> Our position is that several changes are necessary if Sweden is going to live up to its commitments under the CRC and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

### *a) Incomplete data on children in police cells*

Sweden’s latest report to the UN Committee on the Rights of the Child lacks data on the number of children held in police cells on suspicion of crimes and on the average duration of the

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<sup>1</sup> National Board of Institutional Care (SiS), Annual Report 2013.

<sup>2</sup> The Ombudsman for Children in Sweden: 'Förbjud isolering av barn och unga.' (*Ban solitary confinement of children and young people*) (written communication, 27 December 2007).

<sup>3</sup> The Ombudsman for Children in Sweden: *From the Inside – children and young people on life in police cells and remand prisons* (2013).

deprivation of liberty. Swedish police authorities have not collected this type of data in the past. In 2012 the Ombudsman for Children in Sweden therefore requested data from the country's police authorities on the total number of incarcerations of persons under 18 years of age during 2011. Our accumulated data shows that there were 3,052 incarcerations of children in police cells in 2011. Our compilation provides the first national and regional picture of how many incarcerations of children in police cells occur during a year in Sweden.

Continuous follow-up of data on children deprived of their liberty is a prerequisite for upholding the human rights of children. Comparable data which can be examined contributes to increased openness and a lower risk of judicial abuse, which in turn increases trust in the rule of law. **The Ombudsman recommends the Government to instruct the National Police Board to systematically collect data on the number of incarcerations of children in police cells and on the duration of each deprivation of liberty.**<sup>4</sup>

***b) More and more children are detained in Sweden***

Figures indicate that the number of young people suspected of crimes and detained in remand prisons has grown sharply in Sweden over the past 15 years. In 1998 there were 41 children detained in remand prisons; in 2011 that number had risen to 122. This increase is notable considering that the intention of both the CRC and Swedish legislation is that children should only exceptionally be detained before trial.

In order to reduce the use of pretrial deprivation of liberty it is necessary that the alternatives to arrest and detention, which involve adequate supervision, also be acceptable in that they fulfil the child's human rights. **The Ombudsman recommends the government to take action in order to seek other measures for children suspected of crimes, e.g. youth supervision, with the aim of reducing the number of deprivations of liberty before trial as well as the time in detention for those who do have their liberty deprived.**

***c) No child suspected of a crime shall be held in solitary confinement during the investigation***

*"You're just trying to remain in the real world." Daniel*

The UN Special Rapporteur on Torture defines solitary confinement as a physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day.<sup>5</sup> When a child is placed in a remand prison or a police cell in Sweden it almost always means that the child is held for shorter or longer periods in solitary confinement according to this definition. Solitary confinement is what children perceive as the very worst treatment. Children say that it takes both willpower and strength to endure the enormous mental strain that solitary confinement causes.

Against the background of the serious mental harm or suffering solitary confinement can lead to for children, the UN Special Rapporteur on Torture considers that it may amount to torture and other cruel, inhuman or degrading treatment. According to the Rapporteur, solitary confinement of young people, irrespective of its duration, contravenes Article 7 of the UN Covenant on Civil and Political Rights and Article 16 of the UN Convention against Torture and

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<sup>4</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

<sup>5</sup> United Nations General Assembly. Interim report of the Special Rapporteur of the Human Rights Council on Torture and other cruel, inhuman or degrading treatment or punishment. (2011), A/66/268. (The UN Special Rapporteur on Torture, 2011).

other Cruel, Inhuman or Degrading Treatment or Punishment. It is the Rapporteur's view that it should be prohibited in respect of children.<sup>6</sup>

**In our view, no child should be deprived of his or her liberty in solitary confinement during the investigation period. The Ombudsman for Children in Sweden recommends the government to assume its responsibility for creating a justice system in which children in conflict with the law are treated in accordance with their fundamental rights. The Ombudsman recommends the government to take urgent action to introduce an explicit statutory ban on the solitary confinement for children in remand prisons and police cells.<sup>7</sup>**

***d) Introduce time limits***

*"From the moment you wake up until lunchtime, you're waiting. After that, you're more or less sitting around, waiting for dinner." Mark*

According to the Committee on the Rights of the Child, the law must state clearly on what grounds a child may be placed or held in a police cell or remand prison pending trial. There must be a statutory time limit for pretrial deprivation of liberty, which must be regularly reviewed. Time limits must be shorter than those that apply to adults. The maximum time a child in Sweden may be held in a police cell is four days. **The Ombudsman for Children in Sweden recommends the government to introduce a time limit of 24 hours for the time a child may be held in a police cell.**

A child who has been deprived of his or her liberty pending trial shall, according to the Committee on the Rights of the Child, be formally charged and put on trial within 30 days of the beginning of the deprivation of liberty. In Sweden there is no limit at all for pretrial detention. For example one 16-year old child was recently in remand prison for nearly a year. **The Ombudsman for Children in Sweden recommends the government to introduce a time limit of 30 days for pretrial detention in order for Sweden to live up to this requirement.<sup>8</sup>**

***e) No child shall be placed in police cells in their current form***

*"The police cell is pure hell." Axel*

*"It was pretty much your worst nightmare, spending time in the cell. You weren't treated like a human being at all. They threw the food in when it was time. If you were lucky, the container didn't break. Otherwise you had to pick the food up off the floor and eat it." Mark*

The time spent in a police cell is often a frightening experience for a child. The children in our survey describe the police cell environment as unpleasant, inhuman and destructive. They compare the routines and the physical environment in the police cell with being in hell. The treatment the children describe receiving by the staff varies, but can be summarised as cold, impersonal or downright frightening. The children also describe the feeling of being worth less as a human when you have been deprived of your liberty.

Locking children up in that kind of environment during the judicial process is not consistent with the child's fundamental human rights. Neither can it be considered legally certain, as the child is to be interrogated during the time he or she spends in the police cell. Today there are alternatives to the cell environment which must be used. According to the National Police Board, persons between 15 and 18 years of age should only be held in police cells when absolutely

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<sup>6</sup> The UN Special Rapporteur on Torture, 2011.

<sup>7</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

<sup>8</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).



necessary. Under normal circumstances, anyone under 18 should be held under guard in an interrogation room or similar space. **The Ombudsman for Children in Sweden recommends the government to ensure that no child is deprived of his or her liberty during the investigation in a cell intended for adults. If a child is arrested and for some reason cannot be held in an interrogation room or similar, he or she should be placed in a remand prison instead of a police cell.**<sup>9</sup>

**f) Individualize restrictions for children**

*“I’m not allowed to speak to my mother. I find that too much, especially for a young person. Imagine, there are kids who are 15 in here.” Malcolm*

From our interviews with children and young people, analyses of statistics and detention records, as well as discussions with law enforcement representatives, it is clear that it is not unusual for children to have full restrictions imposed on them, both during their time under arrest and in detention, which means that their contacts with the outside world have been limited. It has even happened that young people have been held in solitary confinement in the remand prison for several months, without any contact with either their family or anyone else outside the prison. One of the most important messages from the interviewees was precisely that the lack of contact with the family can be difficult to endure. Our examination of detention records shows that restrictions were approved in all cases where the prosecutor had requested them (91 of 108 cases). In one case alone the court highlighted the suspect’s young age in connection with the prosecutor’s request for restrictions. Neither is it unusual for the restrictions to be maintained for relatively long periods of time.

Criticism of Sweden from both the Council of Europe Committee on the Prevention of Torture and the UN Committee against Torture concerns the use of restrictions following detention. The UN Committee against Torture inspected Sweden in 2008 and recommended the country to undertake measures to reduce the use of restrictions and to shorten the time restrictions lasted. Restrictions must always be based on concrete grounds, be individualized, be proportional to the crime the individual is suspected of and be removed immediately when no longer needed. **The Ombudsman for Children recommends the Swedish government to ensure that when a court decides to place a child on remand, it must make an individual assessment in each case as to which restrictions are necessary.**<sup>10</sup>

**g) All children shall always have access to public defence counsel, from the first interrogation**

*“You begin not to know what you’re talking about. You just want to say what they want to hear so they’ll let you go. You want to say what they want to hear so they’ll cool it.” Emmaus*

*“If you say that you don’t want a lawyer at an interrogation, then maybe you get detained the same evening, but if you say you want a lawyer, then you’ll have to be there for another half a day, guaranteed. You spend a long time in here as it is. So that’s something you absolutely want to avoid.” Lucas*

*“The difference if you have a lawyer in an interrogation is that they don’t shout at you and they don’t look you straight in the eye and tell you that you’re lying.” Gomer*

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<sup>9</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

<sup>10</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

From the accounts we have heard it appears to be the rule rather than the exception that a defence counsel is not present at the initial police interrogation of a young person. A common reason for this is that the children themselves waive the right, since they believe that they will then be allowed to leave the police cell sooner. How the police ask the question can also influence the answer. For example, interviewees told us that the police had asked them if it was OK to do an interrogation without a lawyer. But they were not told that they have a right to a lawyer. Other children expressed a wish to have a defence counsel at the first interrogation, but were refused this by the head interrogator.

Children and young people we spoke to felt that they were condemned in advance even at the first interrogation, which is to say that the justice system has already decided that they are guilty. The way they are treated during the interrogation may reinforce that feeling, and thereby contribute to their giving up or saying what the head interrogator wants to hear. In the worst case, it may lead to the young person admitting to acts he or she has not committed.

Under the CRC, every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. There must be no margin for the stakeholders of the judicial process to use pressure, threats and promises to get the child to waive these rights. Moreover, the child is already at a disadvantage due to the very form of the judicial process and therefore it cannot be regarded as acceptable, in the vast majority of situations, that the child waives that right. In most cases it is impossible for the child to foresee the consequences of such a choice, and therefore the stakeholders of the judicial process must assume their responsibility to guarantee the child his/her fundamental human rights. The circumstance that the child shall always be guaranteed public defence counsel must furthermore not mean that the duration of the deprivation of liberty is prolonged. **The Ombudsman for Children in Sweden recommends the government to ensure that all children are guaranteed fundamental rights during the judicial process. This requires society to make sure that a public defence counsel can be appointed, regardless of the time. It must also be possible to make the appointment promptly.**<sup>11</sup>

#### ***h) Ensure systematic and ongoing training for all actors in the judicial system***

The Ombudsman for Children in Sweden considers that all the actors in the judicial system must possess knowledge about children's rights and how children are to be received and treated. This is in order to guarantee the child his or her human rights throughout the judicial process.<sup>12</sup> **The Ombudsman for Children in Sweden recommends that the government ensure systematic and ongoing training on human rights, including children's rights, for all persons working for and with children e.g. policemen, personnel working in police cells, prosecutors, judges, social workers and legal representatives so that they will be able to fulfil the child's fundamental rights and needs.**

### **3. Children subjected to institutional and compulsory psychiatric care**

During 2013 the Ombudsman for children in Sweden met with children and young people who had sought professional help to deal with their mental health problems. Many of the children and adolescents we met had been subjected to institutional and compulsory psychiatric care. They often spoke of their sense of vulnerability and powerlessness. Some of them understood the need for coercive measures but questioned the extent and manner in which they are used. They emphasised the importance of caregiver attitudes, particularly when patients are strapped

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<sup>11</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

<sup>12</sup> The Ombudsman for Children in Sweden: From the Inside – children and young people on life in police cells and remand prisons (2013).

down or subjected to other coercive measures. Some felt that they had endured too many coercive measures and that the measures had been used thoughtlessly and recklessly. A few of the children and adolescents reported the use of illegal coercive measures. Those that had been institutionalised in an adult ward found the experience to be highly disagreeable.<sup>13</sup>

Given the encroachment on privacy and dignity that is inherent to compulsory psychiatric care, international conventions stipulate rules for protecting the human rights of people for whom these kinds of interventions are necessary. Ensuring that such protection is upheld requires clear legislation, transparency, documentation and supervision.

**a) *Compulsory care and coercive measures at psychiatric facilities must distinguish between children/adolescents and adults and proceed from the rights of the child***

The Ombudsman notes that current legislation does not distinguish between children and adults. The same coercive measures are lawful for everyone. Nor are there any special restrictions or considerations related to care of children and adolescents.<sup>14</sup>

The Ombudsman is critical of the fact that the legislation governing the use of coercive measures at psychiatric facilities neither considers the rights of the child nor distinguishes between children and adults. **The Ombudsman for Children in Sweden recommends the Swedish government to review the legislation and the coercive measures to which children may be subjected for the purpose of ensuring clear, suitable regulations. Such measures must be used only as a last resort and in situations where it is needed in order to protect the life of the child or other people's lives. Children must not be confined in the same ward as adults, as is now the case at both adult and forensic psychiatric facilities. All decisions to impose coercive measures must be subject to appeal, and children and adolescents must receive comprehensible information about their rights. The supervisory authority must have one-on-one conversations with children and be available to them.**<sup>15</sup>

#### **4. Provide effective and impartial complaints mechanisms and establish an independent child representative**

In our interviews with children and young people deprived of their liberty it became clear that they don't always know that you can make complaints about conditions and appeal against decisions. The Council of Europe Committee for the Prevention of Torture has criticised Sweden for not informing young people of their rights. The Committee says that Sweden must ensure that all persons deprived of their liberty receive such information.<sup>16</sup> The Ombudsman for Children in Sweden regards it as very serious that many young people have not had a clear idea about how the system works or about the procedure for appealing against decisions. The right to information is fundamental for giving a child the ability to influence his or her situation, and a core right under the CRC.

Institutions where children are deprived of their liberty are often closed to scrutiny by the outside world. It is therefore important that every child who is deprived of his/her liberty has a right to information and access to complaints mechanisms. Children must be able to turn to an independent body with any questions and complaints regarding care. Children who are deprived of their liberty and/or are subject to coercive measures must also be able to obtain redress and

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<sup>13</sup> The Ombudsman for Children in Sweden: Breaking the silence (2014).

<sup>14</sup> The Ombudsman for Children in Sweden welcomes the proposals recently presented in the Government Offices: 'Delaktighet och rättssäkerhet vid psykiatrisk tvångsvård' (Ds 2014:28) as steps in the right direction.

<sup>15</sup> The Ombudsman for Children in Sweden: Breaking the silence (2014).

<sup>16</sup> European Committee for the Prevention of Torture (CPT/Inf [2009] 34).

compensation when the authorities responsible for their care have neglected those responsibilities. These mechanisms must be known to and easily accessible to children.

**The Ombudsman for Children in Sweden recommends the Swedish government to establish an independent child representative to serve as an independent instance to which children and young people deprived of their liberty can turn with any complaints about how their human rights have been upheld during the process. The representative must be entitled to represent the child in court and have the right to pursue claims in court in order to secure damages for children who are deprived of their liberty.**

The Ombudsman for Children in Sweden is a government agency charged with representing children and young people in accordance with the UN Convention on the Rights of the Child (CRC). We maintain a regular dialogue with children and young people in order to obtain knowledge of their living conditions and their opinions on current issues. We monitor and encourage the implementation of the CRC in Sweden's municipalities, county councils/regions and government agencies. The Ombudsman for Children in Sweden provides information, advocates and proposes changes in legislation and ordinances on issues concerning children's and young people's rights.



The Ombudsman for Children in Sweden  
P.O. Box 22106  
SE-104 22 Stockholm  
Telephone: +46 8 692 29 50  
[info@barnombudsmannen.se](mailto:info@barnombudsmannen.se)  
[www.barnombudsmannen.se](http://www.barnombudsmannen.se)